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OFFICE OF PETITIONS

In re Application of :
Matityahu Fridkin et al :
Application No. 09/117,380 : DECISION GRANTING PETITION
Filed: January 27, 1999 : UNDER 37 CFR 1.181
Attorney Docket No. FRIDKIN=1 :

This is a decision on the petition, filed April 14, 2004, which is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment.¹

The petition is GRANTED.

This application was held abandoned for failure to timely reply to the non-final Office action mailed July 29, 2003, which set a shortened statutory period for reply of three months. A Notice of Abandonment was mailed on March 24, 2004.

Petitioner states that a reply was in fact timely filed. To support this assertion, petitioner has submitted a copy of a return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on October 29, 2003 of an "Amendment/Response."

The reply acknowledged as having been received in the USPTO on October 29, 2003 is not of record in the application file and cannot be located. However, MPEP 503 states that "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the reply to the non-final Office action of July 29, 2003 was timely received on October 29, 2003 in the USPTO but lost after receipt thereof.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

¹ The existence of this petition was only recently brought to the attention of the Office of Petitions. The Office sincerely apologizes for the delay in replying to the petition and any inconvenience caused petitioner by this delay.

The reply received with the petition will be accepted in place of the reply acknowledged as having been received in the USPTO on October 29, 2003.

Any questions concerning this decision on petition may be directed to the undersigned at (571) 272-3218. Inquiries concerning the status or examination procedures of the application should be directed to the Technology Center.

This application file is being forwarded to Technology Center AU 1652 for appropriate action in the normal course of business on the reply received with the petition on April 14, 2004.

A handwritten signature in cursive script that reads "Frances Hicks".

Frances Hicks
Petitions Examiner
Office of Petitions